

AMENDED IN ASSEMBLY MARCH 30, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 484

Introduced by Assembly Member Benoit
(Coauthors: Assembly Members Bogh, Canciamilla, Daucher,
DeVore, Huff, Lieber, and Sharon Runner)
(Coauthors: Senators Battin, Cox, and Dutton)

February 16, 2005

An act to amend *Section 368 of the Penal Code*, and to amend Section 15656 of the Welfare and Institutions Code, relating to elder and dependent adult abuse.

LEGISLATIVE COUNSEL'S DIGEST

AB 484, as amended, Benoit. Elder and dependent adults: theft or embezzlement by caretaker.

Under existing law, the Elder and Dependent Adult Civil Protection Act, a caretaker, as defined, of an elder or dependent adult who violates a law—~~prescribing~~ *proscribing* theft or embezzlement with respect to the property of the elder or dependent adult, may be subject to imprisonment in the county jail or state prison or a fine, or by both the imprisonment and the fine, if value of the money, labor, or real or personal property taken exceeds \$400.

This bill would make it a felony, punishable by imprisonment in the state prison, for a caretaker of an elder or dependent adult to commit a second or subsequent violation of any law—~~prescribing~~ *proscribing* theft or embezzlement with respect to the property of the elder or dependent adult, regardless of the value of the money, labor, or real or personal property taken. The bill would also make additional technical changes to existing law. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 368 of the Penal Code is amended to
2 read:

3 368. (a) The Legislature finds and declares that crimes
4 against elders and dependent adults are deserving of special
5 consideration and protection, not unlike the special protections
6 provided for minor children, because elders and dependent adults
7 may be confused, on various medications, mentally or physically
8 impaired, or incompetent, and therefore less able to protect
9 themselves, to understand or report criminal conduct, or to testify
10 in court proceedings on their own behalf.

11 (b) (1) Any person who knows or reasonably should know
12 that a person is an elder or dependent adult and who, under
13 circumstances or conditions likely to produce great bodily harm
14 or death, willfully causes or permits any elder or dependent adult
15 to suffer, or inflicts thereon unjustifiable physical pain or mental
16 suffering, or having the care or custody of any elder or dependent
17 adult, willfully causes or permits the person or health of the elder
18 or dependent adult to be injured, or willfully causes or permits
19 the elder or dependent adult to be placed in a situation in which
20 his or her person or health is endangered, is punishable by
21 imprisonment in a county jail not exceeding one year, or by a
22 fine not to exceed six thousand dollars (\$6,000), or by both that
23 fine and imprisonment, or by imprisonment in the state prison for
24 two, three, or four years.

25 (2) If in the commission of an offense described in paragraph
26 (1), the victim suffers great bodily injury, as defined in Section
27 12022.7, the defendant shall receive an additional term in the
28 state prison as follows:

29 (A) Three years if the victim is under 70 years of age.

1 (B) Five years if the victim is 70 years of age or older.

2 (3) If in the commission of an offense described in paragraph
3 (1), the defendant proximately causes the death of the victim, the
4 defendant shall receive an additional term in the state prison as
5 follows:

6 (A) Five years if the victim is under 70 years of age.

7 (B) Seven years if the victim is 70 years of age or older.

8 (c) (1) Any person who knows or reasonably should know
9 that a person is an elder or dependent adult and who, under
10 circumstances or conditions other than those likely to produce
11 great bodily harm or death, willfully causes or permits any elder
12 or dependent adult to suffer, or inflicts thereon unjustifiable
13 physical pain or mental suffering, or having the care or custody
14 of any elder or dependent adult, willfully causes or permits the
15 person or health of the elder or dependent adult to be injured or
16 willfully causes or permits the elder or dependent adult to be
17 placed in a situation in which his or her person or health may be
18 endangered, is guilty of a misdemeanor. A second or subsequent
19 violation of this subdivision is punishable by a fine not to exceed
20 two thousand dollars (\$2,000), or by imprisonment in a county
21 jail not to exceed one year, or by both that fine and
22 imprisonment.

23 (2) *A caretaker of an elder or dependent adult who violates*
24 *any provision of law proscribing theft or embezzlement, with*
25 *respect to the property of that elder or dependent adult, after*
26 *having been previously convicted of a violation pursuant to*
27 *paragraph (1), is guilty of a felony, punishable by imprisonment*
28 *in the state prison for two, three, or four years. This paragraph*
29 *shall apply regardless of the value of the money, labor, or real or*
30 *personal property taken.*

31 (d) Any person who is not a caretaker who violates any
32 provision of law proscribing theft, embezzlement, forgery, or
33 fraud, or who violates Section 530.5 proscribing identity theft,
34 with respect to the property or personal identifying information
35 of an elder or a dependent adult, and who knows or reasonably
36 should know that the victim is an elder or a dependent adult, is
37 punishable by imprisonment in a county jail not exceeding one
38 year, or in the state prison for two, three, or four years, when the
39 moneys, labor, goods, services, or real or personal property taken
40 or obtained is of a value exceeding four hundred dollars (\$400);

1 and by a fine not exceeding one thousand dollars (\$1,000), by
2 imprisonment in a county jail not exceeding one year, or by both
3 that fine and imprisonment, when the moneys, labor, goods,
4 services, or real or personal property taken or obtained is of a
5 value not exceeding four hundred dollars (\$400).

6 (e) Any caretaker of an elder or a dependent adult who
7 violates any provision of law proscribing theft, embezzlement,
8 forgery, or fraud, or who violates Section 530.5 proscribing
9 identity theft, with respect to the property or personal identifying
10 information of that elder or dependent adult, is ~~punishable~~
11 *subject to punishment* by imprisonment in a county jail not
12 exceeding one year, or in the state prison for two, three, or four
13 years when the moneys, labor, goods, services, or real or
14 personal property taken or obtained is of a value exceeding four
15 hundred dollars (\$400), and by a fine not exceeding one thousand
16 dollars (\$1,000), by imprisonment in a county jail not exceeding
17 one year, or by both that fine and imprisonment, when the
18 moneys, labor, goods, services, or real or personal property taken
19 or obtained is of a value not exceeding four hundred dollars
20 (\$400).

21 (f) Any person who commits the false imprisonment of an
22 elder or a dependent adult by the use of violence, menace, fraud,
23 or deceit is punishable by imprisonment in the state prison for
24 two, three, or four years.

25 (g) As used in this section, “elder” means any person who is
26 65 years of age or older.

27 (h) As used in this section, “dependent adult” means any
28 person who is between the ages of 18 and 64, who has physical
29 or mental limitations which restrict his or her ability to carry out
30 normal activities or to protect his or her rights, including, but not
31 limited to, persons who have physical or developmental
32 disabilities or whose physical or mental abilities have diminished
33 because of age. “Dependent adult” includes any person between
34 the ages of 18 and 64 who is admitted as an inpatient to a
35 24-hour health facility, as defined in Sections 1250, 1250.2, and
36 1250.3 of the Health and Safety Code.

37 (i) As used in this section, “caretaker” means any person who
38 has the care, custody, or control of, or who stands in a position of
39 trust with, an elder or a dependent adult.

(j) Nothing in this section shall preclude prosecution under both this section and Section 187 or 12022.7 or any other provision of law. However, a person shall not receive an additional term of imprisonment under both paragraphs (2) and (3) of subdivision (b) for any single offense, nor shall a person receive an additional term of imprisonment under both Section 12022.7 and paragraph (2) or (3) of subdivision (b) for any single offense.

(k) In any case in which a person is convicted of violating these provisions, the court may require him or her to receive appropriate counseling as a condition of probation. Any defendant ordered to be placed in a counseling program shall be responsible for paying the expense of his or her participation in the counseling program as determined by the court. The court shall take into consideration the ability of the defendant to pay, and no defendant shall be denied probation because of his or her inability to pay.

~~SECTION 1.~~

SEC. 2. Section 15656 of the Welfare and Institutions Code is amended to read:

15656. (a) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts unjustifiable physical pain or mental suffering upon him or her, or having the care or custody of any elder or dependent adult, willfully causes or permits the person or health of the elder or dependent adult to be injured, or willfully causes or permits the elder or dependent adult to be placed in a situation so that his or her person or health is endangered, is subject to punishment by imprisonment in the county jail not exceeding one year, or in the state prison for two, three, or four years.

(b) Any person who knows or reasonably should know that a person is an elder or dependent adult and who, under circumstances or conditions other than those likely to produce great bodily harm or death, willfully causes or permits any elder or dependent adult to suffer, or inflicts unjustifiable physical pain or mental suffering on him or her, or having the care or custody of any elder or dependent adult, willfully causes or permits the

1 person or health of the elder or dependent adult to be injured or
2 willfully causes or permits the elder or dependent adult to be
3 placed in a situation so that his or her person or health may be
4 endangered, is guilty of a misdemeanor.

5 (c) (1) Any caretaker of an elder or a dependent adult who
6 violates any provision of law—~~prescribing~~ *proscribing* theft or
7 embezzlement, with respect to the property of that elder or
8 dependent adult, is subject to punishment by imprisonment in the
9 county jail not exceeding one year, or in the state prison for two,
10 three, or four years when the money, labor, or real or personal
11 property taken is of a value exceeding four hundred dollars
12 (\$400), and by a fine not exceeding one thousand dollars
13 (\$1,000), or by imprisonment in the county jail not exceeding
14 one year, or by both that imprisonment and fine, when the
15 money, labor, or real or personal property taken is of a value not
16 exceeding four hundred dollars (\$400).

17 (2) A caretaker of an elder or dependent adult who violates
18 any provision of law—~~prescribing~~ *proscribing* theft or
19 embezzlement, with respect to the property of that elder or
20 dependent adult, after having been previously convicted of a
21 violation pursuant to paragraph (1), is guilty of a felony,
22 punishable by imprisonment in the state prison for two, three, or
23 four years. This paragraph shall apply regardless of the value of
24 the money, labor, or real or personal property taken.

25 (d) As used in this section, “caretaker” means any person who
26 has the care, custody, or control of or who stands in a position of
27 trust with, an elder or a dependent adult.

28 (e) Conduct covered in subdivision (b) of Section 15610.57
29 shall not be subject to this section.

30 ~~SEC. 2.~~

31 *SEC. 3.* No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the
36 penalty for a crime or infraction, within the meaning of Section
37 17556 of the Government Code, or changes the definition of a
38 crime within the meaning of Section 6 of Article XIII B of the
39 California Constitution.

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